

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MICHAEL FREDDIE DAVIS,)	
)	
Petitioner,)	
)	
v.)	1:19CV470
)	1:07CR320
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On February 12, 2020, the United States Magistrate Judge's Recommendation was filed and notice was served on Petitioner pursuant to 28 U.S.C. § 636. Petitioner filed objections (Doc. 139) to the Recommendation within the time limit prescribed by Section 636.

The court has reviewed Petitioner's objections *de novo* and finds they do not change the substance of the United States Magistrate Judge's Recommendation (Doc. 137), which is affirmed and adopted.¹

¹As noted in the Recommendation, the Fair Sentencing Act of 2010 did not affect the provisions of § 841(b)(1)(C), and therefore Petitioner is not serving a sentence for a "covered offense" in order to bring a First Step Act claim. See United States v. Wirsing, 943 F.3d 175 (4th Cir. 2019) (holding that "any inmate serving a sentence for pre-August 3, 2010 violations of 21 U.S.C. § 841(b)(1)(A)(iii) or (B)(iii)—both of which were modified by Section 2 of the Fair Sentencing Act. . .—is serving 'a sentence for a covered offense' and may seek a sentence reduction under the First Step Act"). Moreover, sentencing Petitioner "as if" the Fair Sentencing Act had been in effect at his initial sentencing would not produce a change in the applicable statutory penalties or his sentencing range under the United States Sentencing Guidelines, and therefore the Court in its discretion would find no reason to grant relief.

IT IS THEREFORE ORDERED that Petitioner's motions (Docs. 135, 136) for appointment of counsel and relief under the First Step Act are DENIED and that this action is DISMISSED sua sponte without prejudice to Petitioner promptly filing a corrected motion on the proper § 2255 forms if he seeks to attack his sentence under that statute and receives permission from the Court of Appeals to do so.

Finding neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability is not issued.

/s/ Thomas D. Schroeder
United States District Judge

March 26, 2020